

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RASAUN BLACKMON,

Plaintiff,

v.

18-CV-650
DECISION & ORDER

CHRISTOPHER MCKIMMIE, Niagara Falls Police Officer, and SAMUEL COLE, Niagara Falls Police Officer,

Defendants.

On June 7, 2018, the plaintiff, Rasaun Blackmon, commenced this action under 42 U.S.C. § 1983. Docket Item 1. On July 1, 2019, the defendants moved to dismiss, Docket Item 13; on August 16, 2019, Blackmon responded, Docket Item 19; and on September 6, 2019, the defendants replied, Docket Item 20.

On September 9, 2019, this Court referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 21. On November 7, 2019, Judge Scott issued a Report and Recommendation (“R&R”) finding that the defendants’ motion should be granted in part and denied in part. Docket Item 22. Specifically, Judge Scott recommended that this Court deny the defendants’ motion with respect to Blackmon’s claim for excessive use of force and grant the motion with respect to Blackmon’s claims for malicious prosecution and false imprisonment or false arrest. *Id.* at 21. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Scott's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Scott's recommendation to grant in part and deny in part the defendants' motion to dismiss.

For the reasons stated above, the defendants' motion to dismiss, Docket Item 13, is GRANTED IN PART AND DENIED IN PART. Specifically, Blackmon's excessive-force claim may proceed but the remainder of his claims are dismissed. The case is referred back to Judge Scott for further proceedings consistent with the referral order of September 9, 2019, Docket Item 21.

SO ORDERED.

Dated: December 26, 2019
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE